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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/673,944	10/24/2000	Klaus-Dieter Blumenberg	Mo-5946/WW-5	8942

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BAYER CORPORATION  
PATENT DEPARTMENT  
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PITTSBURGH, PA 15205

EXAMINER
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EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 01/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/673,944

Applicant(s)

BLUMENBERG ET AL.

Examiner

Margaret Einsmann

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 22 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 2-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A broad range or limitation together with a narrow range or limitation that falls within the broad range or limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in *Ex parte Wu*, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of *Ex parte Steigewald*, 131 USPQ 74 (Bd. App. 1961); *Ex parte Hall*, 83 USPQ 38 (Bd. App. 1948); and *Ex parte Hasche*, 86 USPQ 481 (Bd. App. 1949). In the present instance, the statement before "preferably" recites the broad recitation, and the claims also recite statements after "preferably" which are the narrower statement of the range/limitation. The term "preferably" occurs six times in the five claims.

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Claim 3 line 2 recites "the coloured pigments." There is no antecedent basis in claim 1 for that term.

In claim 4, one cannot tell how much dye is actually added to the viscose.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1,3-6 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for vat dyes, does not reasonably provide enablement for any other reduced dye which may be converted by oxidation to colored form. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims. For example, there is no enablement for dyeing with sulfur dyes or oxidation dye bases as are normally used in permanent hair coloration.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wearing et al. (Union Carbide), GB 1,038,945.

Patentees disclose a method of producing colored speck-free cellulosic films formed from viscose (p1 lines 16-17). They are used for making seamless regenerated cellulose tubing, with or without fibrous web imbedded therein, used for the processing and packaging of meat products. See page 6 lines 19-23 and 69-80. Applicant claims a method of producing dyed, tubular food wrappings from non-woven fabric coated with colored cellulose by a process of forming the leuco solution of a vat dye, mixing with viscose solution, and coagulating and regenerating the cellulose, and oxidizing the leuco dye. Patentee teaches at page 1 lines 50 et seq, "Adding a vat dye in the form of a leuco solution, i.e. reduced and solubilized, to viscose prior to extrusion also has not produced satisfactory results." That sentence teaches applicant's process except for the step of coating a non-woven fabric web with the colored solution.

It would have been obvious to the skilled artisan that the viscose solution colored with the vat dye as cited above is used to coat a fibrous web for the production of meat wrappings because patentee states that that is the intended use of the colored viscose solution. Since page 6 lines 19-23 disclose that said colored cellulose is generally used with a fibrous web imbedded therein, all of the elements of applicant's claims are disclosed.

Regarding claim 2, all of the dyes disclosed therein are vat dyes, thus included in patentee's disclosure at page 1 line 50.

Regarding the limitations of claim 3, those are the conventional reducing agents for vat dyes. Patentee uses sodium hydrosulfite (dithionite) in the examples.

Regarding claim 4, it is within the skill of the artisan to vary the amount of coloring agent depending on the value of the tint desired. Additionally, one cannot tell the percentage of dye to viscose being claimed in claim 4.

Regarding the limit of claim 5, pigments are conventionally added to add opacity and deepen coloration. See patentees examples.

Regarding claim 6, CMC is a well known thickener in aqueous systems, and it is not inventive to use a composition for its known purpose.

### ***Specification***

The disclosure is objected to because of the following informalities: Page 4, last paragraph discusses the claims by numbers. This is not appropriate because the claim numbers change during prosecution. For example, claims 7-9 have already been canceled in this application.

Appropriate correction is required.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 703-308-3826. The examiner can normally be reached on 7:00 AM -4:30 PM M-Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 703-308-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Margaret Einsmann  
Primary Examiner  
Art Unit 1751

December 27, 2002